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**SUBSTITUTE HOUSE BILL 1923**

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**State of Washington**

**59th Legislature**

**2005 Regular Session**

**By** House Committee on Financial Institutions & Insurance (originally sponsored by Representatives P. Sullivan, Haler, Pettigrew, Walsh, Morrell, Strow, Kilmer, Kessler and Simpson)

READ FIRST TIME 03/04/05.

1       AN ACT Relating to the creation of certified capital companies to  
2 promote investment in start-up and emerging Washington businesses;  
3 adding a new section to chapter 48.14 RCW; adding a new chapter to  
4 Title 43 RCW; creating a new section; and providing a contingent  
5 effective date.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7       NEW SECTION.   **Sec. 1.** DEFINITIONS.   The following definitions  
8 apply to this chapter:

9       (1)(a) "Affiliate" means:

10       (i) Any person who, directly or indirectly, beneficially owns,  
11 controls, or holds power to vote fifteen percent or more of the  
12 outstanding voting securities or other voting ownership interests of  
13 the certified capital company or insurance company;

14       (ii) Any person, fifteen percent or more of whose outstanding  
15 voting securities or other voting ownership interests are directly or  
16 indirectly beneficially owned, controlled, or held with power to vote  
17 by the certified capital company or insurance company;

18       (iii) Any person who, directly or indirectly, controls, is

1 controlled by, or is under common control with the certified capital  
2 company or insurance company;

3 (iv) A partnership in which the certified capital company or  
4 insurance company is a general partner; or

5 (v) Any person who is an officer, director, employee, or agent of  
6 the certified capital company or insurance company, or an immediate  
7 family member of such officer, director, employee, or agent.

8 (b) Notwithstanding (a) of this subsection, an investment by a  
9 certified investor in a certified capital company pursuant to an  
10 allocation of premium tax credits in section 4 of this act shall not  
11 cause such certified capital company to become an affiliate of such  
12 certified investor.

13 (2) "Certification date" means the date on which the certified  
14 capital company is so designated by the office for the certified  
15 capital company program.

16 (3) "Certified capital" means an amount of cash that:

17 (a) Is invested by a certified investor in a certified capital  
18 company; and

19 (b) Fully funds the purchase price of either or both certified  
20 investor's equity interest in the certified capital company or a  
21 qualified debt instrument issued by the certified capital company.

22 (4) "Certified capital company" means a partnership, corporation,  
23 trust, or limited liability company, organized on a for-profit basis,  
24 that: (a) Has its principal office located or is headquartered in  
25 Washington; (b) has as its primary business activity the investment of  
26 cash in qualified businesses or qualified rural businesses; and (c) is  
27 certified by the department as meeting the criteria of this chapter.

28 (5) "Certified investor" means any insurer as defined in RCW  
29 48.01.050 that contributes certified capital.

30 (6) "Commissioner" means the state insurance commissioner.

31 (7) "Department" means the department of community, trade, and  
32 economic development.

33 (8) "Director" means the director of the department of community,  
34 trade, and economic development.

35 (9) "Net profits on certified investments" means the amount of  
36 money returned to the certified capital company in repayment of or in  
37 exchange for the certified capital company's qualified investment or  
38 investments in the qualified business in excess of the amount of such

1 qualified investment or investments. Such number shall aggregate all  
2 of the certified capital company's qualified investments where gains on  
3 qualified investments are netted against losses on qualified  
4 investments.

5 (10) "Person" means any natural person or entity, including but not  
6 limited to a corporation, general or limited partnership, trust, or  
7 limited liability company.

8 (11) "Qualified business" means a business that is independently  
9 owned and operated and meets all of the following requirements:

10 (a) It is headquartered in this state, its principal business  
11 operations are located in this state, at least fifty percent of its  
12 employees are in Washington, and the certified capital company has a  
13 reasonable expectation, based on an affidavit of one of the principal  
14 officers of the business or other comparable evidence, that the  
15 business intends to preserve its headquarters and principal place of  
16 business in Washington for at least three years after the qualified  
17 investment and that it will expend substantially all of the qualified  
18 investment within Washington pursuant to the criteria adopted by the  
19 commissioner by rule;

20 (b) That is a small business as defined in RCW 19.85.020;

21 (c) Is not predominantly engaged in: (i) Professional services,  
22 including but not limited to accountants, doctors, or lawyers; (ii)  
23 banking or lending; (iii) real estate development; (iv) insurance; (v)  
24 oil and gas exploration; (vi) direct gambling activities; (vii) making  
25 loans to or investments in a certified capital company or an affiliate;

26 (d) Any business that is classified as a qualified business at the  
27 time of the first qualified investment in the business shall remain  
28 classified as a qualified business, may receive continuing qualified  
29 investments, and such continuing investments shall be qualified  
30 investments even though the business may not meet the definition of a  
31 qualified business at the time of such continuing investments; except  
32 the business shall not be eligible to receive further qualified  
33 investments if:

34 (i) It has relocated its headquarters or principal business  
35 operations outside of this state; or

36 (ii) It has not expended substantially all of its prior qualified  
37 investments within Washington as required by the program. For the

1 purposes of this chapter and section 2 of this act, the purchase of  
2 services and goods from outside Washington is not precluded, if the  
3 services are performed or the goods are used in Washington.

4 (12) "Qualified debt instrument" means a debt instrument issued by  
5 a certified capital company, at par value or a premium, with an  
6 original maturity date of at least five years from the date of  
7 issuance, a repayment schedule which is not faster than a level  
8 principal amortization over five years, and interest, distribution, or  
9 payment features which are not related to the profitability of the  
10 certified capital company or the performance of the certified capital  
11 company's investment portfolio.

12 (13) "Qualified distribution" means any distribution or payment by  
13 a certified capital company in connection with the following:

14 (a) Reasonable costs and expenses of forming, syndicating, and  
15 organizing the certified capital company, including reasonable and  
16 necessary fees paid for professional services, including, but not  
17 limited to, legal and accounting services, related to the formation of  
18 the certified capital company, and the costs of financing and insuring  
19 the obligations of the certified capital company so long as, at the  
20 time the certified capital company initially receives its investment of  
21 certified capital from its certified investors, the certified capital  
22 company has cash equal to at least fifty percent of the amount of  
23 certified capital such certified capital company initially received as  
24 investment from its certified investors;

25 (b) Reasonable costs and expenses of managing and operating the  
26 certified capital company, including an annual management fee in an  
27 amount that does not exceed two and one-half percent of certified  
28 capital. No such cost or expense shall be paid to a certified investor  
29 or affiliate of a certified investor. Such costs and expenses in the  
30 aggregate shall not exceed five percent of certified capital in any one  
31 year;

32 (c) Reasonable and necessary fees in accordance with industry  
33 custom for professional services, including but not limited to legal  
34 and accounting services, related to the operation of the certified  
35 capital company; except that such professional services shall not be  
36 construed to include lobbying or governmental relations;

37 (d) Any increase or projected increase in federal or state taxes,  
38 including penalties and related interest, of the equity owners of a

1 certified capital company resulting from the earnings or other tax  
2 liability of the certified capital company to the extent that the  
3 increase is related to the ownership, management, or operation of a  
4 certified capital company;

5 (e) Payments to debt holders of a certified capital company may be  
6 made without restriction with respect to repayments of principal and  
7 interest on indebtedness owed to them by a certified capital company,  
8 including indebtedness of the certified capital company on which  
9 certified investors earned tax credits. A debt holder that is also a  
10 certified investor or equity holder of a certified capital company may  
11 receive payments with respect to such debt without any restriction  
12 whatsoever.

13 (14) "Qualified investment" means the investment of cash by a  
14 certified capital company in a qualified business for the purchase of  
15 any debt, debt participation, equity, or hybrid security, of any nature  
16 and description whatsoever, including a debt instrument or security  
17 which has the characteristics of debt but which provides for conversion  
18 into equity or equity participation instruments such as options or  
19 warrants. Any qualified investment in the form of a debt instrument,  
20 including those owned through debt participations, must have a final  
21 stated maturity of at least two years from the date of issuance and a  
22 repayment schedule that is no faster than level principal amortization  
23 over two years, however, this does not prohibit (a) the qualified  
24 business from voluntarily prepaying a qualified investment at any time;  
25 or (b) the certified capital company from exercising any of its rights  
26 as a creditor, including the acceleration of the debt owed upon a  
27 default by the qualified business under the terms of the debt  
28 instrument or upon the acquisition, merger, or the sale of all or  
29 substantially all of the assets of the qualified business.

30 (15) "State premium tax liability" means any liability incurred by  
31 an insurance company under the provisions of RCW 48.14.020 or in the  
32 case of a repeal or a reduction by the state of the liability imposed  
33 by RCW 48.14.020, any other tax liability imposed upon an insurance  
34 company by the state.

35 NEW SECTION. **Sec. 2.** A new section is added to chapter 48.14 RCW  
36 to read as follows:

37 PREMIUM TAX CREDIT. (1) Any certified investor who makes an

1 investment of certified capital pursuant to an allocation of tax  
2 credits under section 4 of this act shall, at the time of investment,  
3 earn a vested credit against state premium tax liability equal to one  
4 hundred percent of the certified investor's investment of certified  
5 capital. A certified investor shall be entitled to take up to ten  
6 percent of the vested tax credit to reduce the certified investor's  
7 state premium tax liability due under RCW 48.14.020 for any tax year of  
8 the certified investor beginning with the prepayment obligation  
9 beginning June 15, 2008, for the tax year commencing on January 1,  
10 2008, plus any amount of unused tax credits carried forward pursuant to  
11 this section.

12 (2) A certified investor taking the credit under this section is  
13 subject to all the requirements of chapter 82.32 RCW. The tax credit  
14 that may be applied against state premium tax liability in any one tax  
15 year may not exceed the state premium tax liability of the certified  
16 investor for such tax year. All unused tax credits against state  
17 premium tax liability may be carried forward indefinitely and used in  
18 any subsequent year until the tax credits are utilized in full.

19 (3) A certified investor claiming a tax credit against state  
20 premium tax liability earned through an investment in a certified  
21 capital company shall not be required to pay any additional retaliatory  
22 tax levied pursuant to RCW 48.14.040 as a result of claiming that tax  
23 credit.

24 (4) A certified investor is not required to reduce the amount of  
25 tax pursuant to the state premium tax liability included by the  
26 certified investor in connection with ratemaking for any insurance  
27 contract written in this state because of a reduction in the certified  
28 investor's tax liability based on the tax credit allowed under this  
29 act.

30 (5) If the taxes paid by a certified investor with respect to its  
31 state premium tax liability constitute a credit against any other tax  
32 which is imposed by this state, the certified investor's credit against  
33 such other tax shall not be reduced by virtue of the reduction in the  
34 certified investor's tax liability based on the tax credit allowed  
35 under this act.

36 (6) Decertification of a certified company shall cause the  
37 disallowance and the recapture of the credit allowed under subsection  
38 (1) of this section. The commissioner shall assess interest, but not

1 penalties, on the credit for which the person is not eligible. The  
2 interest shall be assessed at the rate provided for delinquent excise  
3 taxes under chapter 82.32 RCW, shall be assessed retroactively to the  
4 date the tax credit was taken, and shall accrue until the taxes for  
5 which the credit has been used are repaid. The amount to be disallowed  
6 and recaptured shall be assessed as follows:

7 (a) Decertification of a certified capital company within two years  
8 of its starting date prior to meeting the requirements of section  
9 5(1)(a) of this act shall cause the disallowance of one hundred percent  
10 of the credit allowed under subsection (1) of this section and the tax  
11 for which the credit shall be immediately due.

12 (b) Decertification of a certified capital company which, having  
13 met all the requirements of section 5(1)(a) of this act, subsequently  
14 fails to meet the requirements of section 5(1)(b) of this act, shall  
15 cause the disallowance of seventy percent of the credit allowed under  
16 subsection (1) of this section and any portion of such credit in excess  
17 of thirty percent that was previously taken shall be immediately due.

18 (c) Decertification of a certified capital company which, having  
19 met all the requirements of section 5(1) of this act, shall not cause  
20 the disallowance of any credits allowed under subsection (1) of this  
21 section nor the recapture of any portion of such credits that was  
22 previously taken.

23 (d) If, after twelve years after a certified capital company  
24 receives an investment of certified capital, such certified capital  
25 company has failed to invest one hundred percent of its certified  
26 capital allocable in qualified investment, such certified capital  
27 company shall be required to pay to the commissioner, for deposit in  
28 the general fund, an amount equal to two times the amount of net  
29 profits on qualified investments as required by section 7(3) of this  
30 act at such subsequent time when it was fully invested one hundred  
31 percent and has begun to make a distribution of net profits. The  
32 requirement shall not apply to a certified capital company in which at  
33 least fifty percent of voting stock, capital, membership interests, or  
34 other beneficial ownership interest, as the case may be, are owned by  
35 an entity that is managed, directly or indirectly, by a nonprofit  
36 corporation. This amount of payment to the commissioner shall not be  
37 reduced by the amount set forth in section 7(3) of this act.

1 (7) Revocation of certification from a certified capital company  
2 pursuant to section 9 of this act, before the later of (a) the third  
3 anniversary of the certification date of the certified company or (b)  
4 the date on which the certified capital company satisfies the  
5 requirements of section 5(1)(b) of this act, shall cause the  
6 disallowance of one hundred percent of the credits allowed under  
7 subsection (1) of this section and the tax for which the credit was  
8 given is immediately due.

9 (8) No credit shall be allowed in any tax year in which the  
10 eligible person, individually or with or through one or more  
11 affiliates, be a managing partner of or underwrite or control the  
12 direction of a certified capital company for which the credit is  
13 allowed under this section. This provision shall not preclude a  
14 certified investor, insurance company, or any other party from  
15 exercising its legal rights and remedies in the event that a certified  
16 capital company is in default of its statutory obligations or its  
17 contractual obligations to such certified investor, insurance company,  
18 or other party or from monitoring the certified capital company to  
19 ensure its compliance with section 3 of this act or disallowing any  
20 investments that have not been approved by the department pursuant to  
21 section 5(3) of this act.

22 (9) A certified investor allowed a credit against its state tax  
23 liability earned through an investment in a certified capital company  
24 shall not be required to pay any additional retaliatory tax levied  
25 pursuant to RCW 48.14.040 as a result of claiming such credit.

26 (10) Premium tax credits may be transferred or sold. The  
27 commissioner shall adopt rules for the transfer or sale of premium tax  
28 credits. Any transfer or sale shall not affect the time schedule for  
29 claiming the premium tax credits. Any tax credits recaptured under  
30 section . . . of this act shall be the liability of the certified  
31 investor that actually claimed the premium tax credits.

32 NEW SECTION. **Sec. 3. CERTIFICATION.** (1) The department shall  
33 establish by rule the procedures for making an application to become a  
34 certified capital company.

35 (2) An applicant is required to:

36 (a) File an application with the department;

1 (b) Pay a nonrefundable application fee of seven thousand five  
2 hundred dollars at the time of filing the application;

3 (c) Have an equity capitalization at the time of seeking  
4 certification of five hundred thousand dollars or more in the form of  
5 unencumbered cash, marketable securities, or other liquid assets. The  
6 applicant shall submit as part of its application an audited balance  
7 sheet that contains an unqualified opinion of an independent certified  
8 public accountant issued not more than thirty-five days before the  
9 application date that states whether the applicant satisfies this  
10 equity capitalization requirement; and

11 (d) Have at least two principals or at least two persons employed  
12 to manage the funds who have at least two years of money management  
13 experience in the venture capital industry; except that an applicant  
14 that seeks to be certified with respect to premium tax credits  
15 allocated pursuant to section 4 of this act need only to have at least  
16 two years of experience in either venture capital or investment banking  
17 industry.

18 (3) The department may certify partnerships, corporations, trusts,  
19 or limited liability companies, organized on a for-profit basis, which  
20 submit an application to be designated as a certified capital company  
21 if such applicant is located, headquartered, and licensed or registered  
22 to conduct business in Washington, has as its primary business activity  
23 the investment of cash in qualified businesses and meets the other  
24 criteria set forth in this act.

25 (4) The department shall review the organizational documents of  
26 each applicant for certification and the business history of each  
27 applicant, determine that the applicant's cash, marketable securities,  
28 and other liquid assets are at least five hundred thousand dollars, and  
29 determine that the officers and the board of directors, general  
30 partners, trustees, managers, or members are trustworthy and are  
31 thoroughly acquainted with the requirements of this section.

32 (5) Any offering material involving the sale of securities of the  
33 certified capital company shall include the following statement:

34 "By authorizing the formation of a certified capital company, the  
35 state does not necessarily endorse the quality of management or the  
36 potential for earnings of such company and is not liable for damages or  
37 losses to a certified investor in the company. Use of the word  
38 "certified" in an offering does not constitute a recommendation or

1 endorsement of the investment by the Washington state insurance  
2 commissioner. If any applicable provisions of the "certified capital  
3 company act" are violated, the state may require forfeiture of unused  
4 premium tax credits and repayment of used premium tax credits."

5 (6) Within sixty days after the receipt of an application, the  
6 department shall issue the certification or refuse the certification  
7 and communicate in detail to the applicant the grounds for refusal,  
8 including suggestions for the removal of such grounds. The department  
9 shall begin accepting applications to become a certified capital  
10 company in the certified capital company program on January 1, 2006.

11 (7)(a) No insurance company or affiliate of an insurance company  
12 shall, directly or indirectly:

13 (i) Beneficially own, whether through rights, options, convertible  
14 interests, or otherwise, fifteen percent or more of the voting  
15 securities or other voting ownership interest of a certified capital  
16 company;

17 (ii) Manage a certified capital company; or

18 (iii) Control the direction of investments for a certified capital  
19 company.

20 (b) A certified capital company may obtain a guaranty, indemnity,  
21 bond, insurance policy, or other payment undertaking for the benefit of  
22 its certified investors from any entity; except that in no case shall  
23 more than one certified investor of such certified capital company or  
24 affiliate of such certified investor be entitled to provide such  
25 guaranty, indemnity, bond, insurance policy, or other payment  
26 undertaking in favor of the certified investors of the certified  
27 capital company and its affiliates in this state.

28 (c) This subsection shall not preclude a certified investor,  
29 insurance company, or other party from exercising its legal rights and  
30 remedies, including, without limitation, interim management of a  
31 certified capital company, in the event that a certified capital  
32 company is in default of its statutory obligations or its contractual  
33 obligations to such certified investor, insurance company, or other  
34 party.

35 NEW SECTION. **Sec. 4.** AGGREGATE LIMITATIONS ON TAX CREDITS;  
36 ALLOCATION. (1) The aggregate amount of certified capital for which  
37 tax credits will be allocated to all certified investors under this act

1 shall not exceed the amount that would entitle all certified investors  
2 of certified capital companies to take aggregate tax credits of one  
3 hundred million dollars or ten million dollars per year for ten years.  
4 No certified capital company, on an aggregate basis with its  
5 affiliates, may file tax credit allocation claims that exceed the  
6 maximum amount of certified capital for which tax credits will be  
7 allocated as provided in this subsection (1).

8 (2) Tax credits shall be allocated to certified investors in the  
9 order that the tax credit allocation claims are filed with the  
10 department. All tax credit allocation claims filed with the department  
11 on the same day shall be treated as having been filed  
12 contemporaneously. Any tax credit allocation claims filed with the  
13 department prior to the tax credit allocation claim filing date will be  
14 deemed to have been filed on the tax credit allocation claim filing  
15 date. The department will set the tax credit allocation claim filing  
16 date to be ninety days after the department begins to accept  
17 applications under section 3 of this act.

18 (3) In the event that two or more certified capital companies file  
19 tax credit allocation claims with the department on behalf of their  
20 respective certified investors on the same day, and the aggregate  
21 amount of such tax credit allocation claims exceeds the aggregate limit  
22 of tax credits under this section or such lesser amount of tax credits  
23 that remain unallocated on such day, then the tax credits shall be  
24 allocated among the certified investors who filed on that day on a pro  
25 rata basis with respect to the amounts claimed. The pro rata  
26 allocation for any one certified investor shall be the product obtained  
27 by multiplying a fraction, the numerator of which is the amount of the  
28 tax credit allocation claim filed on behalf of such certified investor  
29 and the denominator of which is the total of all tax credit allocation  
30 claims filed on behalf of all certified investors on such day, by the  
31 aggregate limit of tax credits under this section or such lesser amount  
32 of tax credits that remain unallocated on such day.

33 (4) Within ten business days after the department receives a tax  
34 credit allocation claim filed by a certified capital company on behalf  
35 of one or more of its certified investors, the department shall notify  
36 the certified capital company of the amount of tax credits allocated to  
37 each of the certified investors of such certified capital company.

1 (5) In the event a certified capital company does not receive  
2 aggregate investments of certified capital equaling the amount of tax  
3 credits allocated to its certified investors within ten business days  
4 of the certified capital company's receipt of notice of allocation,  
5 then it shall so notify the department on or before the next business  
6 day and that portion of the tax credits allocated to the certified  
7 investors of such certified capital company in excess of the amount of  
8 certified capital invested in such certified capital company by such  
9 date will be forfeited. The department shall then reallocate those  
10 forfeited tax credits among the certified investors of the other  
11 certified capital companies on a pro rata basis with respect to the tax  
12 credit allocation claims filed on behalf of such certified investors.

13 (6) The maximum amount of tax credit allocation claims that may be  
14 filed on behalf of any one certified investor, on an aggregate basis  
15 with its affiliates, in one or more certified capital companies, shall  
16 not exceed the lesser of either (a) the greater of ten million dollars  
17 or fifteen percent of the aggregate limitation as provided in this  
18 section; or (b) ten times the largest annual state premium tax  
19 liability incurred by the certified investor on an aggregate basis with  
20 its affiliates during the three tax years preceding the year of the  
21 allocation date for which final returns have been filed.

22 NEW SECTION. **Sec. 5. REQUIREMENTS FOR CONTINUANCE OF**  
23 **CERTIFICATION.** (1) To continue to be eligible for certification, a  
24 certified capital company shall make qualified investments according to  
25 the following schedule:

26 (a) Within two years after the allocation date, an amount equal to  
27 at least twenty-five percent of the certified capital allocable to such  
28 certified capital company must be placed in qualified investments.

29 (b) Within five years after the allocation date, an amount equal to  
30 at least fifty percent of the certified capital allocable to such  
31 certified capital company must be placed in qualified investments.

32 (2) The aggregate cumulative amount of all qualified investments  
33 made by the certified capital company from an allocation date shall be  
34 considered in the calculation of the percentage requirements under this  
35 act.

36 (3) Prior to making a proposed investment in a specific business,  
37 a certified capital company will request from the department a written

1 opinion that the proposed investment will qualify as a qualified  
2 investment in a qualified business. The department shall have fifteen  
3 business days from the receipt of such a request to determine whether  
4 the proposed investment qualifies as a qualified investment in a  
5 qualified business and to notify the certified capital company of its  
6 determination and an explanation thereof. If the department fails to  
7 notify the certified capital company of its determination within the  
8 fifteen business day period, the proposed investment shall be deemed to  
9 be a qualified investment in a qualified business. If the department  
10 determines that the proposed investment does not meet the definition of  
11 a qualified investment or qualified business or both, the department  
12 may nevertheless consider the proposed investment a qualified  
13 investment, and if necessary the business a qualified business, if the  
14 department determines that the proposed investment will further state  
15 economic development.

16 (4) All certified capital not placed in qualified investments by  
17 the certified capital company may be held or invested in such manner as  
18 the certified capital company, in its discretion, deems appropriate.  
19 The proceeds of all certified capital returned to a certified capital  
20 company after being originally placed in qualified investments may be  
21 placed again in qualified investments and shall count toward any  
22 requirement of this section with respect to placing certified capital  
23 in qualified investments.

24 (5) If within ten years after the starting date of the certified  
25 capital company program, one hundred percent of the certified capital  
26 allocable to a certified capital company participating in such program  
27 has not been placed in qualified investments, the specific certified  
28 capital company shall no longer be permitted to receive management  
29 fees.

30 (6) Any business which is classified as a qualified business at the  
31 time of the first investment in said business by a certified capital  
32 company shall remain classified as a qualified business and may receive  
33 follow-on investments from any certified capital company, and such  
34 follow-on investments shall be qualified investments even though such  
35 business may not meet the definition of a qualified business at the  
36 time of the follow-on investments, provided that the business meets the  
37 requirements of this section and section 6 of this act and such

1 business reaffirms its intention to maintain its headquarters in  
2 Washington and conduct its primary business operations in Washington.

3 (7) No qualified investment may be made by a certified capital  
4 company to the extent such investment would cause the company's total  
5 qualified investment outstanding with respect to the qualified business  
6 receiving such investment to exceed fifteen percent of the total  
7 certified capital of the certified capital company at the time of such  
8 investment.

9 (8) Documents and other materials submitted by certified capital  
10 companies or by businesses for the purpose of the continuance of  
11 certification shall not be public records if such records are  
12 determined by the department to be trade or business secrets and shall  
13 be maintained in a confidential manner by the department.

14 (9) The aggregate cumulative amount of all qualified investments  
15 made by a certified capital company will be considered in the  
16 calculation of the percentage requirements under this section, provided  
17 that any amounts received by a certified capital company from a  
18 qualified business as (a) commitment fees, closing fees, or other  
19 similar fees, excluding reimbursement of out-of-pocket expenses,  
20 including legal fees and accounting fees in excess of one percent of  
21 the certified company's investment in the qualified business or (b)  
22 license fees, royalties, or similar charges shall not be considered in  
23 any percentage calculations under this section.

24 NEW SECTION. **Sec. 6.** CERTIFIED CAPITAL COMPANY REPORTING  
25 REQUIREMENTS. Each certified capital company shall report the  
26 following to the department:

27 (1) As soon as practicable after the receipt of certified capital  
28 or an irrevocable funding commitment subject only to the receipt of an  
29 allocation pursuant to section 2 of this act:

30 (a) The name of each certified investor from which the certified  
31 capital was received, including such certified investor's insurance tax  
32 identification number;

33 (b) The amount of each certified investor's investment of certified  
34 capital; and

35 (c) The date on which the certified capital was received.

36 (2) On an annual basis, on or before January 31st of each year:

1 (a) The amount of the certified capital company's certified capital  
2 at the end of the immediately preceding taxable year;

3 (b) Whether or not the certified capital company has invested more  
4 than fifteen percent of its total certified capital in any one  
5 business;

6 (c) All qualified investments that the certified capital company  
7 has made in the previous taxable year, including the number of  
8 employees of each qualified business in which it has made investments  
9 at the time of such investment and as of December 1st of the preceding  
10 taxable year. For any qualified business where the certified capital  
11 company no longer has an investment, the certified capital company  
12 shall provide employment figures for such company as of the last day  
13 before the investment was terminated;

14 (d) All qualified investments made in distressed rural areas and  
15 distressed urban areas; and

16 (e) Other information that the department may reasonably request  
17 that will help the department ascertain the impact of the certified  
18 capital companies both directly and indirectly on the economy of the  
19 state of Washington including but not limited to the number of jobs  
20 created by qualified businesses that have received qualified  
21 investments.

22 (3) Each certified capital company shall provide to the department:

23 (a) Annual audited financial statements, which shall include the  
24 opinion of an independent certified public accountant, within ninety  
25 days of the close of its fiscal year; and (b) an "agreed upon  
26 procedures report" or equivalent regarding the operations of the  
27 certified capital company regarding section 5 of this act. Upon  
28 receiving notification and documentation by a certified capital company  
29 that it has satisfied the requirements of section 5 of this act that it  
30 has invested fifty percent of its certified capital, the department  
31 shall have sixty days to notify such certified capital company that it  
32 has or has not met such requirement. If the department does not  
33 provide such notification within sixty days, the certified capital  
34 company shall then be deemed to have met such a requirement.

35 (4) Each certified capital company shall pay to the department an  
36 annual, nonrefundable certification fee of five thousand dollars on or  
37 before April 1st, or ten thousand dollars if later. However, no fee is

1 required within six months of the date a certified capital company is  
2 first certified by the department.

3 NEW SECTION. **Sec. 7.** DISTRIBUTIONS. (1) A certified capital  
4 company may make qualified distributions at any time. In order for a  
5 certified capital company to make a distribution other than a qualified  
6 distribution to its equity holders, the aggregate cumulative amount of  
7 all qualified investments of the certified capital company must equal  
8 or exceed an amount equal to one hundred percent of its certified  
9 capital and, of those investments, an amount equal to or exceeding  
10 twenty-five percent of its certified capital must have been invested in  
11 a minority and women-owned business as defined by the department and an  
12 amount equal to twenty-five percent must have been invested in a  
13 qualified rural investment as defined by the department. For the  
14 purposes of this act, a certified capital company may elect to count an  
15 investment in a minority and women-owned business which is also a  
16 qualified rural investment as either but not as both.

17 (2) In the event that a business in which a qualified investment is  
18 made relocates its principal business operations to another state  
19 during such investment, the cumulative amount of qualified investment  
20 shall be reduced by the amount of such qualified investment for the  
21 purposes of this section unless (a) the certified capital company  
22 invests an amount at least equal to the investment of certified capital  
23 in the relocated business in a qualified business located in Washington  
24 within six months of the relocation or (b) the business demonstrates  
25 that it has returned its principal business operations to Washington  
26 within three months of such relocation. A business shall be deemed to  
27 have relocated its principal business operations outside Washington if  
28 the primary workplace of more than fifty percent of the employees of  
29 such business within the state is relocated to another state.

30 (3)(a) A certified capital company shall pay to the department for  
31 deposit in the general fund an amount equal to thirty percent of the  
32 net profits on qualified investments. A certified capital company  
33 shall make all payments required under this subsection concurrently  
34 with distributions of profits and gains to its equity owners; however,  
35 nothing contained in this subsection shall be construed to affect  
36 qualified distributions.

1 (b) The amount of any payment to the department shall be reduced by  
2 fifteen percent of such net profits and gains on qualified investments  
3 if, at the time of such net profits distribution, such certified  
4 capital company irrevocably commits to both: (i) Reinvest the  
5 remaining fifteen percent of such net profits not being paid to the  
6 general fund into qualified businesses, and (ii) invest an additional  
7 amount equal to at least fifteen percent of such net profits  
8 distribution into qualified business which additional amount shall come  
9 from a separate pool of venture capital that is controlled by the  
10 certified capital company but that does not contain certified capital.  
11 In making investments from funds under this subsection, the certified  
12 capital company shall follow the requirements of this section  
13 pertaining to obtaining approval of the investment being in a qualified  
14 business. Once qualified investments in qualified businesses have been  
15 made pursuant to this subsection equal thirty percent of the net  
16 profits on qualified investments, then the requirement under this  
17 subsection shall be satisfied and the proceeds from such qualified  
18 businesses may be distributed without restriction.

19 NEW SECTION. **Sec. 8.** DECERTIFICATION. (1) The department shall  
20 conduct an annual review of each certified capital company to determine  
21 if the certified capital company is abiding by the requirements of  
22 certification, to advise the certified capital company as to the  
23 eligibility status of its qualified investments, and to ensure that no  
24 investment has been made in violation of this section. The cost of the  
25 annual review shall be paid by each certified capital company according  
26 to a reasonable fee schedule adopted by the department.

27 (2) Any material violation of section 6 of this act shall be  
28 grounds for decertification of the certified capital company and the  
29 disallowance of credits as set forth in section 2 of this act.

30 (3) Once a certified capital company has invested an amount  
31 cumulatively equal to one hundred percent of its certified capital in  
32 qualified investments and has met all other requirements under this  
33 act, the certified capital company shall no longer be subject to  
34 regulation by the department and shall no longer be subject to section  
35 6 of this act. Upon receiving documented certification by a certified  
36 capital company that it has invested an amount equal to one hundred  
37 percent of its certified capital, the department shall have sixty days

1 to notify such certified capital company that it has or has not met the  
2 requirements with a reason for such determination if it has not, in the  
3 judgment of the director or the director's designee, met such  
4 requirement. If the department does not provide such notification  
5 within sixty days, the certified capital company shall be deemed to  
6 have met such requirements.

7 (4) The department shall send written notice of such  
8 decertification to the commissioner and to the address of each  
9 certified investor whose tax credit has been subject to recapture or  
10 forfeiture, using the address shown on the last filing submitted to the  
11 department.

12 NEW SECTION. **Sec. 9.** REVOCATION OF CERTIFICATION. The department  
13 may revoke the certification of a certified capital company if any  
14 material representation to the department in connection with the  
15 application process proves to have been falsely made or if the  
16 application materially violates any requirements established by the  
17 department pursuant to this act.

18 NEW SECTION. **Sec. 10.** REGISTRATION REQUIREMENTS. All investments  
19 for which tax credits are allowable under section 2 of this act shall  
20 satisfy the conditions of being registered or specifically exempt from  
21 registration under section 5 of this act.

22 NEW SECTION. **Sec. 11.** REPORTS TO THE GOVERNOR AND LEGISLATURE.  
23 The department shall report to the governor and the appropriate  
24 committees of the legislature on or before June 1st of each year  
25 beginning in 2007:

26 (1) The number of certified capital companies holding certified  
27 capital;

28 (2) The amount of certified capital invested in each certified  
29 capital company;

30 (3) The cumulative amount that each certified capital company has  
31 invested as of January 1, 2007, and the cumulative total each year  
32 thereafter;

33 (4) The cumulative amount that the investments of each certified  
34 capital company have leveraged in terms of capital invested by other

1 sources of capital in qualified businesses at the same time or  
2 subsequent to investments made by a certified capital company in such  
3 businesses;

4 (5) The total amount of tax credits granted under this act for each  
5 year the credits have been awarded;

6 (6) The performance of each certified capital company with regard  
7 to the requirements for continued certification;

8 (7) The classification of the companies in which each certified  
9 capital company has invested according to industrial sector and size of  
10 company;

11 (8) The total gross number of jobs created by investments made by  
12 each certified capital company using certified capital and the number  
13 of jobs retained;

14 (9) The location of the companies in which each certified capital  
15 company has invested; and

16 (10) Those certified capital companies that have been decertified,  
17 or have had their certification revoked, including the reasons for  
18 decertification or revocation.

19 NEW SECTION. **Sec. 12.** RULES. The department shall develop  
20 proposed rules as deemed necessary to implement the provisions of this  
21 act and shall report to the legislature on these proposed rules by  
22 December 1, 2005. These proposed rules will not take effect until the  
23 effective date of sections 1 through 11 of this act.

24 NEW SECTION. **Sec. 13.** CAPTIONS. Captions used in this act are  
25 not any part of the law.

26 NEW SECTION. **Sec. 14.** Sections 1 and 3 through 12 of this act  
27 constitute a new chapter in Title 43 RCW.

28 NEW SECTION. **Sec. 15.** (1) Sections 1 through 11 of this act take  
29 effect July 1, 2006, if specific funding for the purposes of this act,  
30 referencing this act by bill or chapter number, is provided by June 30,  
31 2006, in the omnibus appropriations act or the supplemental omnibus  
32 appropriations act.

33 (2) If specific funding for the purposes of this act, referencing

1 this act by bill or chapter number, is not provided by June 30, 2006,  
2 in the omnibus appropriations act or the supplemental omnibus  
3 appropriations act, this act is null and void.

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